

Russell Brown
CHAPTER 13 TRUSTEE
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re

RAYMOND N. MILYARD,

and

TAMMY A. THIBOUTOT,

Debtors.

Chapter 13

Case No. 2-20-bk-03069-PS

TRUSTEE'S RECOMMENDATION

Deadline is July 27, 2020

The Trustee has reviewed the Plan, Schedules, and Statement of Financial Affairs.

Subject to the resolution of the following issues, the Plan will meet Code requirements and the Trustee will recommend confirmation:

(1) Toyota Motor Credit Corporation and the Arizona Department of Revenue have filed objections to the Plan. The attorney for the Debtors must notify the Trustee in writing if the objections are resolved or, if they are unresolved, file the appropriate motions to get the Court to hold hearings on the objections. If resolution of the objections changes Plan funding requirements, the Trustee requires receipt of a new Plan analysis with any proposed order confirming the Plan. If a motion is filed to get a hearing before the Court, the time to submit a proposed Order confirming the Plan to the Trustee is extended. The creditors must sign the order confirming plan, or file a withdrawal of the objection to confirmation.

1 (2) The Order confirming must state “Quicken Loans, LLC will be paid its pre-petition
2 arrears of \$266.03 through the Plan. Regular post-petition mortgage payments, post-petition
3 mortgage fees, and expenses shall be paid directly by the Debtors to the secured creditor.”
4

5 (3) The secured debt to be paid to Desert Financial Credit Union is to be reduced to
6 \$21,488.68 as stated in the creditor’s proof of claim, to be paid at the rate of 6% interest as stated
7 in the Plan.

8 (4) The proof of claim filed by the Arizona Department of Revenue indicates that the
9 Debtors have not filed their 2010 through 2012 income tax returns. The Trustee cannot recommend
10 confirmation until the tax returns are filed and the creditor amends its proof of claim.
11

12 (5) The proposed Plan is underfunded as it fails to meet the Best Interest of Creditors Test
13 of \$78,294.20. Additional plan yield is required.

14 (6) The Debtors schedule an interest in a pending personal injury claim. The Trustee
15 requires information regarding the current status of the case, an estimate of the value of the claim,
16 and the expected date when the case will be resolved. The Trustee advises the Debtors that any
17 settlement is subject to Bankruptcy Court approval and that any settlement or recovery will be
18 required to be turned over to the Trustee for the benefit of creditors. The Debtors’ attorney must
19 contact the Trustee’s staff attorney, Rachel Flinn, to prepare an Application to Appoint Special
20 Counsel. Finally, the proposed Order Confirming Plan must include a provision that any funds from
21 the claim will be applied as a supplemental payment to be paid first to unsecured, priority claims,
22 then to unsecured, nonpriority claims, then finally as advance Plan payments, but the term of the Plan
23 will not be reduced to less than 36 months unless all allowed claims are paid in full.
24
25

26 (7) Based upon review of the completed Trustee’s Questionnaire the Debtor historically
27 receives substantial bonuses. The net bonus income represents additional disposable income that
28

1 must be turned over as a supplemental payment to the Plan. The Trustee requires a copy of Debtor's
2 most recent pay stub and the immediate turnover of net bonus income (if any) received post-petition.
3 Any order confirming plan must provide for the turnover of all future net bonus income as of
4 confirmation to be paid into the Plan as supplemental payments. The Debtor is to confirm when and
5 how often the bonuses are received. In addition, the Order confirming must state that within seven
6 days of receipt the Debtor will submit a copy of the pay stub along with any net bonuses to the
7 Trustee.
8

9 (8) The Statement of Financial Affairs, (Part 3), Item #7, discloses a preferential payment
10 to Beverly Thilbottot in the amount of \$3,300.00. The Trustee requires that the Debtors complete
11 the enclosed Waiver of Statutes of Limitation. In addition, the preferential payment must be
12 accounted for in the Best Interest of Creditors Test calculation.
13

14 (9) Other requirements:

15 (a) Due to the possibility of errors on the claims docket, it is the attorney's responsibility to
16 review all proofs of claim filed with the Court and resolve any discrepancies between relevant claims
17 and the Plan prior to submitting any proposed Order Confirming Plan to the Trustee. Also, when
18 counsel provides a proposed order confirming plan to the Trustee, counsel must file or create a notice
19 on the Court docket. L.R.B.P. 2084-13(b).
20

21 (b) Requests by the Trustee for documents and information are not superseded by the filing
22 of an amended plan or motion for moratorium.
23

24 (c) The Trustee will object to any reduction in the Plan duration or payout in a proposed
25 Order Confirming Plan unless an amended or modified plan is filed and noticed out.

26 (d) The Trustee requires that any proposed Order Confirming Plan state: "The Plan and this
27 Order shall not constitute an informal proof of claim for any creditor."
28

1 (e) To expedite the order review process, counsel must use the recommended form for the
2 order confirming plan found at www.chapter13.info.

3 (f) The order confirming plan **must** be accompanied by a cover letter that goes over the
4 Trustee's Recommendation items by each paragraph. If counsel fails to use the order form and
5 provide such letter, the Trustee will reject the proposed order outright and the time to comply with
6 the Recommendation is not extended.

7 (g) Any order confirming plan to provide that the Debtors will give the Trustee a copy of the
8 2020 - 2023 federal and state income tax returns, including all attachments, forms, schedules and
9 statements, within 14 days of filing them.

10 (h) Nothing in the Plan or Order Confirming Plan is to alter counsel's obligation to represent
11 the Debtors. Counsel is to represent the Debtor(s) in all matters regardless of the fee agreement until
12 the Court issues an order permitting counsel to withdraw or the case is closed.

13 (i) According to Paragraph II.H.3. of the "Administrative Procedures for Electronically Filed
14 Cases," as governed by Local Rule 5005-2(e), the Debtors' attorney is to retain the original
15 signatures of all signatories to the Stipulated Order Confirming Plan (other than that of the Trustee).
16 Pursuant to Local Rule 2084-13(c), the Trustee will upload the proposed Order Confirming a plan
17 or granting a motion for a moratorium.

18 (j) The proposed order confirming plan, any responses to this recommendation, and
19 documents submitted in response to this recommendation are to be submitted to the applicable case
20 administrator in the Trustee's office.



1 SUMMARY: Pursuant to Local Rule 2084-10(b), by July 27, 2020, Debtors are to resolve all
2 of the above issues and provide the Trustee with a proposed order confirming plan that meets the
3 above requirements, or the Debtor must file an objection to the Recommendation and obtain a
4 hearing date. If neither is accomplished, then the Trustee could file a notice of intent to lodge a
5 dismissal order.
6

7
8 Copy mailed or emailed to::

9 RAYMOND N. MILYARD
10 TAMMY A. THIBOUTOT
11 16420 WEST BADEN AVENUE
12 GOODYEAR, AZ 85338

13 PHOENIX FRESH START
14 THOMAS ADAMS MCAVITY
15 4602 E. THOMAS RD., SUITE S-9
16 PHOENIX, AZ 85028

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